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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/382,794	08/25/1999	ANATOLY DRITSCHILO	010091-041	5682
909	7590	05/20/2004	EXAMINER	
PILLSBURY WINTHROP, LLP			WEBMAN, EDWARD J	
P.O. BOX 10500			ART UNIT	
MCLEAN, VA 22102			PAPER NUMBER	

1617

DATE MAILED: 05/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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04/382794

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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EXAMINER

ART UNIT

PAPER NUMBER

4/19/04

DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 12/4/03☐ This action is **FINAL**.☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.**A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 34-70 is/are pending in the application.
Of the above, claim(s) 1-16, 38, 40, 45-49, 51-70 is/are withdrawn from consideration.
☐ Claim(s) _____ is/are allowed.
☒ Claim(s) 34-37, 39, 41-44, 50 is/are rejected.
☐ Claim(s) _____ is/are objected to.
☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
☐ The specification is objected to by the Examiner.
☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.
☐ received in Application No. (Series Code/Serial Number) _____
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 6/12/03
☐ Interview Summary, PTO-413
☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

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Applicant's election with traverse of Group I, cylindrical container, without coating in Paper No. 12/4/03 is acknowledged. The traversal is on the ground(s) that the invention is a device rather than a composition, that Group II is not a dispenser,. And there is no burden to examine all inventions. This is not found persuasive because the elected vehicle is metallic and contains a chemical active, reading on a chemical active with a porous metal coat, which is construed as a composition rather than a device for purposes of examination. Applicants argue that Group II does not claim dispensing means. However, neither does it disclose retention means. That is, the claim is broad enough to include a dispenser. As to the argument of no burden, burden has been shown by the classification of the Groups in entirely different classes.

Applicants also note that a phone restriction should have been attempted. However, telephone communication need be made when the requirement is complex (MPEP 812.01). The requirement was so deemed in view of the combination of restriction and election of species requirements.

The requirement is still deemed proper and is therefore made FINAL.

The election of species requirement over active agents is withdrawn.

Claims 34-37,39, 41-44, 50 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Nowhere in the specification is the

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term "rigid" disclosed. The passages that applicants cite for support in their remarks, filed 6/17/03, do not disclose or suggest the term "rigid".

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –


(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 34-37, 39, 41-44 rejected under 35 U.S.C. 102(b) as being anticipated by GB 2243777 (GB '777).

GB '277 teaches a cylindrical tube containing capillary tubes at one or both ends for the delivery of actives, including insulin (abstract). A length of 5-100 mm (page 3 line 2) and bore of 0.1-10 mm (page 4 lines 7-8) is disclosed. Titanium is disclosed (page 3 line 22).

Claims 34-37, 39, 41-44, 50 rejected. No claims allowed.

Any inquiry concerning this communication should be directed to Edward J. Webman at telephone number 571-272-0633.


EDWARD J. WEBMAN
PRIMARY EXAMINER
GROUP 1500